

Remarks

Applicant's attorney thanks Examiner Nicholson for discussing the Office Action with him over the phone on January 8, 2007. US 4,231,469 (Arscott) and the subject matter of new method claims were discussed.

In the Office Action, the Examiner rejected claims 1–38. New claims 39 and 40 have been added. Claims 1–40 remain in the application.

The Examiner rejected: (i) claims 1, 2, 11, 18, 21, 22, 27, 29, 30, 31, and 37 under 35 U.S.C. § 102(b) as being anticipated by Arscott; (ii) claims 3–6, 12–14, and 28 under 35 U.S.C. § 103(a) as being unpatentable over Arscott in view of US 4,598,815 (Adama); (iii) claims 10, 19, 23, and 38 under 35 U.S.C. § 103(a) as being unpatentable over Arscott in view of US 5,984,078 (Bonnet); and (iv) claims 9, 15–17, 24–26, and 33–35 under 35 U.S.C. § 103(a) as being unpatentable over Arscott in view of US 3,921,789 (Goldinger).

MPEP § 2131 provides: “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). And MPEP § 2142 provides: “[A] prior art reference [used to establish a *prima facie* case of obviousness] ... must teach or suggest all the claim limitations.” “The mere absence of an explicit requirement [of a claim] cannot reasonably be construed as an affirmative statement that [the requirement is in the reference].” *In re Evanega*, 4 USPQ2d 1249 (Fed. Cir. 1987).

Contrary to the Examiner's position that Arscott discloses all the limitations of the claims rejected as anticipated and, together with the other references, all the limitations of the claims rejected as obvious, Arscott does not disclose, among other things, a main conveyor and a cross

conveyor intersecting and passing through the main conveyor to divert conveyed articles from the main conveyor to either side, in which the cross conveyor includes a roller-top conveyor belt whose rollers are arranged to rotate on axes generally perpendicular to the intersected conveying path along the main conveyor. Arscott does not disclose a main conveyor using a roller-top conveyor belt as claimed as a cross conveyor to divert articles. Instead, Arscott describes using a roller-top conveyor as in FIGS. 4–6 “to accept products entering [the conveyors] sideways and being discharged sideways ... at entry or discharge areas.” (See Arscott, col. 3, ll. 47–54.) The only conveyor Arscott describes with respect to the embodiments of FIGS. 4–6 is the roller-top conveyor from which articles may be discharged sideways or onto which articles may enter sideways with the aid of the roller rotation. Thus, Arscott uses the roller-top conveyor as the main conveyor. Applicant, on the other hand, uses a roller-top cross conveyor as the instrument of diverting articles from a main conveyor.

Furthermore, Arscott is concerned with conveyors in which “objects are pushed onto a moving or indexing conveyor at one point on its route, and are later removed sideways at another point.” (See Arscott, col. 1, ll. 17–20.) So, even if, for the sake of argument, applicant’s roller-top conveyor belt is treated as a main conveyor, articles passed onto the cross conveyor and not diverted to either side advance directly across and off the roller-top belt at the same point with the aid of roller rotation. This operation differs from that of Arscott, which teaches entry and discharge at different points. Thus, Arscott, alone or in combination with the other references, does not disclose all the elements of the claimed invention. Therefore, the §102(b) and §103(a) rejections are unsupported by the art and should be withdrawn.

New method claims 39 and 40 describe modes of operating conveyors not believed shown in the prior art. The new claims are supported by the specification in paragraph 16, for example. No new matter has been added in the new claims.

Applicant respectfully requests reconsideration of the rejection of the claims in view of these remarks, entry of the new claims, and allowance of all the claims in the application.

This amendment is being sent within three months of the Office Action so no extension of time petition fee should be due. Fees for the two new claims are being paid electronically simultaneously with the electronic filing of this submission, but any other fees necessary for consideration of this response may be charged to Deposit Account No. 12-0090. If the Examiner thinks a telephone conference would expedite the prosecution of this application, he is invited to call the undersigned attorney.

Respectfully submitted,
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